

LEGAL REMEDIES

WILLIAMS, ZINMAN & PARHAM P.C.

SPECIAL FLOOD EDITION

After heavy rains like in the Phoenix area last week, a lot of tenants experienced flooding. This often causes the home to settle, the floors to swell, and everything from cabinets to doors to get out of alignment. It can be very expensive to fix the underlying problem and the damage to the home.

Many insurance companies provide standard flood coverage in the homeowners policy, however this is a company and policy specific rider and each tenant needs to contact their insurance agent to check coverage. Some insurance companies or tenants will claim that the water would not have caused them a problem in the first place if the park had been properly designed and maintained by the landlord.

It is common after heavy rain fall for parks to get tenant complaints demanding they fix the tenant's homes' claiming the park is at fault. This type of blame is based on the tenants or insurance company's belief that because the park flooded, the park must not have a functional drainage plan or if they have one it is either inadequate or not maintained. Most often this is not the case and the park is not responsible for an act of nature.

The law, ARS 33-1451(A) requires tenants to maintain their spaces, not the park. In every single case of a tenant home being flooded that we have seen it was the tenant, not the park who was at fault. This can result from building structures below the drainage plane; building obstructions in the drainage path like Arizona rooms, patios, pads for air conditioning, and landscaping decorations, that divert water to the home.

Or it can result from their plants pushing the ground up as their roots grow and mature, diverting water out of drainage channels. Sometimes it results from the tenant installation contractor not setting the home high enough, or improperly sloping the ground around it or improperly skirting the home. Sometimes it is from failure to maintain the skirting.

If a tenant makes a demand that the park fix a flooding problem at his home, the park should get someone down there immediately and take a full set of photos showing the damage and the condition of the lot and surrounding areas so the true causes can be identified. Do not be in a hurry to fix these problems if the cause is tenant neglect or negligence.

Parks cannot be built without approved government plans. These plans include drainage plans that government planning agencies must approve. As long as the park was built according to plan and as long as the lay of the land and drainage features called for have not changed since the park has been open, there is generally no responsibility of the park for water damage to tenant homes.

FLOOD PROBLEMS

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Water front property is not always a good thing!

PARK DEVELOPMENT / DRAINAGE PLAN

As landlords, handling tenant complaints is second nature, that is until nature causes a new problem. How do you handle tenant complaints due to flooding, or other natural disasters.

One thing to keep in mind when addressing these complaints is the fact that high density housing projects are commercial and

require planning and zoning approval and inspections. This process includes drainage plans.

As well planned as the park may be, the record rain fall we had last week overloaded systems that simply could not handle the amount of rainfall we had. Entire city drainage systems failed. This was not necessarily due to bad

planning, this is due to record rain fall, which is an act of nature.

Regardless of these facts it is important that you take pictures immediately if you receive a complaint. Take pictures that tell a story, from the house to the surrounding area showing elevation and drainage. Take notes, then call our office.

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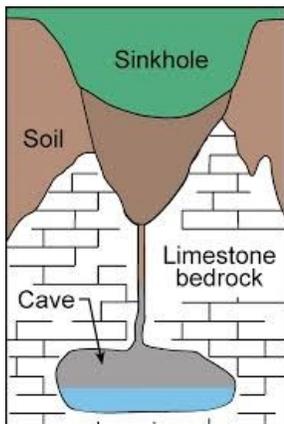
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**Basic sinkhole
diagram.**

ARS 33-1451 Tenant to maintain mobile home space; notice of vacating; clearance for removal

A. A tenant of a mobile home space shall exercise diligence to maintain that part of the premises which he has rented in as good condition as when he took possession and shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of city, county and state codes materially affecting health and safety.
2. Keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permits.
3. Dispose from his mobile home space all rubbish, garbage and other waste in a clean and safe manner as prescribed by park rules.
4. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so.
5. Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises.
6. Inform the landlord or manager of the mobile home park at least thirty days before the expiration of the rental agreement that the agreement will not be renewed by the tenant and that the premises will be vacated. If timely notice is not given prior to moving from the mobile home space, the tenant then is responsible for rent equal to an amount consistent with the applicable notice period.

B. A tenant shall not remove a mobile home from a mobile home space unless the tenant has received from the landlord a clearance for removal showing that all monies due the landlord as of the date of removal have been paid or that the landlord and tenant have otherwise agreed to the removal. The landlord shall not interfere with the removal of a mobile home for any reason other than nonpayment of monies due as of the date of removal even if the term of the rental agreement has not expired.

SINK HOLES, WHAT ARE THEY?

Sinkholes are holes that occur in areas that have underlying soluble rock, which include limestone and salt bodies according to the Arizona Geological Survey. Sink holes are formed when groundwater travels through these rocks and slowly, bit by bit, molecule by molecule, it dissolves those rocks.

They are not muddy areas under homes that get that way due to surface water drainage. Even if they really were sinkholes, their occurrence would seem to be the result of inadequate compacting of the ground prior to installation of the home by the tenant contractors or by other causes that are not the result of anything the park has done.

Tenants in several parks have started claiming landlord liability for repairing their homes due to water damage resulting from last week's heavy rains and are claiming to have sinkholes. They have started saying they have been affected by "sink Holes" instead of stating the obvious, they

have been affected by record high rain fall.

Possibly, someone has put the word out that using this new terminology to describe an old problem will somehow trigger landlord liability. It does not. In every contested case that has ruled on the issue, responsibility has been determined to be that of the tenant. You can read two such decisions here:

[Cypress Estates](#) and [Holiday Spa](#).

If you have tenants claiming to be affected by "sink holes" it is important that you immediately send someone to investigate. Take pictures and measurements of the depressions and drainage area around the house. Once you have this information it is important you get some advice from your attorney before you make any promises or denials of responsibility to your tenants and also before you call your insurance company.